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10/058,206	01/26/2002	Ignatius L. Catania	IC-2002	3932

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EXAMINER

ADDIE, RAYMOND W

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 06/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

10/058,206

Applicant(s)

CATANIA, IGNATIUS L.

Examiner

Raymond W. Addie

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-- The MAILING DATE f this communicati n appears n the cover sheet with the c rrespondence address --

Period f r R ply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Pri rity under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. Claims 1, 5-9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Shamblin # 5,605,415.

Shamblin '415 discloses an apparatus intended to be used with a straight edge board (10) for leveling of unrestrained materials, such as concrete.

The apparatus comprising:

A 1st and 2nd engagement members (12) further comprising:

A 1st and 2nd frame (12), in the form of an inverted "U" shape, attached to the straight edge board, the frame having a top plate (14), and 2 parallel side plates. At least one of said side plates having at least one aperture for receiving a fastener.

1st and 2nd adjustable, handles (24) attached to a 1st and 2nd adjustable handle brackets (16/18). Said 1st adjustable handle bracket (16/18) attached to an exterior surface of the 1st engagement member.

A plurality of fasteners (22) disposed through the 1st aperture of the side plates, for securing the engagement members to the straight edge board.

Although Shamblin does not disclose the handle brackets as being attached to the exterior surface of the top plate nor the use of bolts to attach the engagement members to the straight edge board; Shamblin does disclose attaching the handle brackets to the exterior surface of the rearward side plate and the use of nails and bolts for fastening component parts together.

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Hence, it would have been obvious, if not inherent to one of ordinary skill in the art, to dispose the handle brackets on the top plate, as opposed to the side plate, in order to direct a downward pressure on the unrestrained materials and to use bolts instead of nails, to maintain structural integrity of the attached components.

In regards Claims 5, 6 Shamblin discloses the handles (24, 26) can be in the range of approximately 5 feet. However, it would be obvious, if not inherent the handles could be any length or diameter, depending on job site requirements and operator preferences.

In regards to Claims 7-9 although Shamblin does not disclose specific sizes and dimensions of the engagement members; Shamblin does disclose the use of the apparatus in combination with a wooden, 2x4 board, and illustrates the attached components, in fig. 1. Hence, it would have been obvious, if not inherent that the engagement members disclosed by Shamblin, would have: 1/10th-1/4" side plates; the side plates being spaced apart the thickness of a 2X4, which ranges between 1.5-2" depending on the cut of the board. The side plates being at least ½ the width of the 2x4 board, in order to provide sufficient structural integrity to the attached components.

2. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shamblin in view of Nisenbaum # 4,828,427.

Shamblin discloses an apparatus intended to be used with a straight edge board, having a pair of handles, but does not disclose the use of handle grips. However,

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Nisenbaum discloses an apparatus intended to be used with a straight edge board, having a pair of handles and handle grips (52), for the comfort of the user. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the apparatus of Shamblin, with handle grips, as taught by Nisenbaum, in order to maximize the comfort of the user.

3. Claims 3, 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shamblin '415 in view of Carrillo # 4,449,845.

Shamblin '415 discloses an apparatus intended to be used with a straight edge board, having a pair of handles, handle brackets, and engagement members, as put forth above. What Shamblin does not disclose is the material the engagement members are composed of, nor does Shamblin disclose providing more than one aperture in at least one side face.

However, Carrillo teaches a screed board apparatus, having a generally "U-shaped" engagement member (12) having a top plate (18), 2 side plates (14, 20), each side plate having at least 2 apertures (16, 22) respectively, for receiving a nut & bolt combination to attach a screed board (30) to the engagement member. Said engagement member (12) being made of steel. Said screed board apparatus further having a pair of elongated handle bars (40, 50) both handle bars being provided with individual grips (42). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the apparatus intended for use with a straight edge board, of Shamblin, with an engagement member made of metal, handle grips and a

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plurality of apertures, as taught by Carrillo, in order to maximize the structural integrity and ease of use of the screed board apparatus. See Carrillo col. 3.

3. Claims 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shamblin '415 in view of McKown # 2,586,472.

Shamblin '415 discloses an apparatus intended to be used with a straight edge board (10) for leveling of unrestrained materials, such as concrete.

The apparatus comprising:

A 1st and 2nd engagement members (12) further comprising:

A 1st and 2nd frame (12), in the form of an inverted "U" shape, attached to the straight edge board, the frame having a top plate (14), and 2 parallel side plates. At least one of said side plates having at least one aperture for receiving a fastener.

1st and 2nd adjustable handles (24) attached to a 1st and 2nd adjustable handle brackets (16/18). Said 1st and 2nd adjustable handle brackets (16/18) being attached to an exterior surface of the 1st and 2nd engagement members.

A plurality of fasteners (22) disposed through the 1st aperture of the side plates, for securing the engagement members to the straight edge board.

Shamblin does not disclose the handle brackets as being attached to the exterior surface of the top plate, nor the use of bolts to attach the engagement members to the straight edge board nor the composition of the engagement members nor the use of handles having a threaded end. However, Shamblin does disclose attaching the handle brackets to the exterior surface of the rearward side plate and the use of nails and bolts

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for fastening component parts together and the engagement members are sized to receive either a 2x4 or 2x6 straight edged board. Hence, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, that the engagement members disclosed by Shamblin would have side plates approximately 2.5-3.5" long. Further, McKown teaches an apparatus for use with a straight edge board for leveling unrestrained materials comprising:

A handle (30) having a threaded end for reception in a handle bracket (28); a generally U-shaped engagement member made of weldable material, such as steel; and having a plurality of apertures (24) in a 1st side plate (14) for receiving screws to secure a straight edge board to the engagement member.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the apparatus for use with a straight edge wooden board, of Shamblin, with metal engagement members and threaded handles, as taught by McKown, in order to facilitate changing component parts that may get worn from use. See McKown Col. 2-3; fig. 2.

In regards to Claims 11, 15 Shamblin discloses an apparatus for the intended utilization with a straight edge wooden board for leveling of uncured concrete comprising 1st and 2nd engagement members, intended to be attached to a 2x4" or 2x6" wooden board. Hence, it would be obvious that the side plates would be spaced 1.5" to 2" apart, in order to receive said 2" wide, wooden board. What Shamblin does not disclose is providing a plurality of screw holes in a 1st side plate. However, McKown teaches it is

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desirable to provide an engagement member side plate (14) with a plurality of screw holes in order to securely attach the engagement member with a straight edge board. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the apparatus intended for use with a straight edge, of Shamblin, with a plurality of screw holes, as taught by McKown, in order to securely attach the engagement member with a straight edge board.

In regards to Claims 12-13 although neither Shamblin nor McKown disclose the diameter or length of the handle, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the apparatus intended for use with a straight edge board, with a handle 24" long and having a 1" diameter, in order to prevent a use from "stooping over" as taught by Shamblin.

In regards to Claim 14 although neither Shamblin nor McKown discloses the thickness of the engagement member, Shamblin does disclose the engagement member is intended to be used with a 2x4" board that is 8-10' long. Therefore, it would have been obvious to one of ordinary skill in the art, to make the engagement member with plate thicknesses in the range of 1/8"-1/4" in order to provide a rigid screeding edge.

4. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shamblin '415 in view of McKown '472 and Carrillo '845.

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Shamblin discloses a combination for leveling of uncured concrete, the combination comprising:

A straight edged, 2x4" wooden board (10).

1st and 2nd engagement members (12), each further comprising:

A frame attached to the straight edged board. Said frames each having a top plate and 2 side plates.

1st and 2nd adjustable handle brackets (16/18) attached to the exterior surface of the engagement members.

A 1st fastening pin disposed through a 1st aperture in at least one side plate for securing the engagement members to the straight edged 2x4" wooden board.

1st and 2nd cylindrical, elongated handles, engaged to the adjustable handle bracket.

Although Shamblin does not disclose the length of the side plates, Shamblin does disclose a 2x4" wooden board, or other similar cross-sectional shape, must be securely received within the channel, formed by the side plates. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the engagement members with side plates that are at least 2 ½" long, in order to provide a channel able to receive a straight wooden board, such as a 2x4" or 2x6".

What Shamblin does not disclose is the material the engagement member is made of, the use of bolts and nuts to attach the board to the engagement member or a handle having a threaded end.

However, McKown discloses a combination for leveling of uncured concrete, the combination comprising: A straight edged board (34), a handle (30) having a threaded

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end (32) for engagement with a bracket (28) and a plurality of threaded, screw holes (24) for receiving thumb screws (26). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the combination for leveling uncured concrete of Shamblin with threaded connections, as taught by McKown, in order to permit replacement of the handle and screed board, as reasonably suggested by McKown. See cols. 2-4.

What Shamblin in view of McKown do not disclose is the type of material the engagement members are made of. However, Carrillo teaches it is desirable to provide a screeding device with an engagement member made of steel, in order to provide an engagement member with sufficient strength to maintain the straight edged board in proper alignment with the handle, and the concrete being leveled.

Conclusion

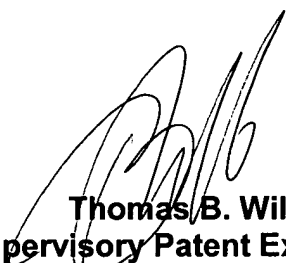
5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Record # 5,980,154 discloses a manual screeding device. Eitzen # 6,200,065 discloses a portable, vibratory screed. Henderson # 1,220,986 discloses a templet for concrete work. Naser et al. # 4,702,641 discloses an adjustable concrete working tool. McGrath # 5,460,461 discloses a manual concrete screed handle. Baxter # 3,046,856 discloses a concrete finishing device.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond Addie whose telephone number is (703) 305-0135. The examiner can normally be reached on Monday-Friday from 8:00 am to 2:00 pm, 6-8 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703) 308-3870. The fax phone number for this Group is (703) 308-8623.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.



Thomas B. Will
Supervisory Patent Examiner
Group 3600

RWA
5/27/2003